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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier Changes Provisions of the Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers	)	

AT&T REPLY COMMENTS

Mark C. Rosenblum
Peter H. Jacoby

Attorneys for AT&T Corp.

295 North Maple Avenue
Room 3250J1
Basking Ridge, NJ 07920
(908) 221-4243

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SUMMARY

Just as the previous prescription of verification rules has not eliminated the problem of "slamming," promulgating additional verification requirements in this proceeding cannot, standing alone, contribute meaningfully to reduction in unauthorized carrier changes. As the record makes clear, effective enforcement by the Commission, state public agencies, and affected carriers under Section 258 of the Communications Act is indispensable to controlling such abuse of consumers. Such an enforcement scheme requires that the Commission preempt inconsistent state carrier selection regulations, while encouraging state commissions actively to apply those nationwide rules. However, the Commission should reject out of hand the rhetoric of incumbent LECs whose calls for a role in policing draconian "three strikes and you're out" remedies, based solely on the incidence of carrier change disputes, are transparently designed to assist those carriers in maintaining and entrenching their current intraLATA and local exchange monopoly positions.

The record compiled in this proceeding demonstrates the imperative need for the Commission to extend its current verification requirements for interLATA presubscription to also cover customers' selections of intraLATA and local carriers. Application of these well understood and effective procedures is necessary so that the carrier selection process in these incipiently-competitive markets can proceed without disruption for either carriers or consumers. The record also confirms

that verification of carrier "freezes" and customer changes in frozen carrier choices, in combination with other critical rule changes to assure informed customer choice, is necessary to assure that the carrier freeze mechanism intended to protect consumers against unauthorized carrier changes does not instead become a tool for impairing consumers' ability conveniently to select a carrier.

As the comments also make clear, fundamental changes are required to simplify and make less burdensome the Commission's proposed rules and procedures for determining intercarrier liability for the costs of "premiums" and for making reparations for such premiums to customers affected by unauthorized carrier changes. By making these rule changes, and by rejecting the proposal renewed by some parties to "absolve" customers of charges from purportedly unauthorized carriers, the Commission can materially enhance the effectiveness of the private enforcement remedy created by Section 258.

Finally, like the earlier phase of this proceeding, the current comment cycle fails to disclose any significant record evidence of unauthorized changes attributable to inbound calling, or to rebut the fact that verification of such calls would be inordinately costly to both carriers and customers alike. The Commission should therefore withdraw its tentative conclusion to mandate verification of inbound calls.

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AT&T REPLY COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, and the schedule prescribed in the Commission's August 15 Public Notice (DA 97-1746), AT&T Corp. ("AT&T") submits this reply to comments of other parties on the Commission's proposals in the Further Notice in this proceeding for additional modifications to existing carrier selection rules and policies.[1]

I. CURRENT VERIFICATION PROCEDURES SHOULD BE EXTENDED TO INTRALATA AND LOCAL CARRIER SELECTIONS.

There is no serious opposition from any quarter to the Commission's proposal (Further Notice, ¶¶ 11-15)

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[1] Implementation of the Subscriber Carrier Selection Changes Provisions of Telecommunications Act of 1996/Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94-129, Further Notice of Proposed Rulemaking and Memorandum Opinion Order on Reconsideration, FCC 97-248, released July 15, 1997. AT&T refers to that decision in these Comments as the Further Notice and Reconsideration Order, as applicable. Appendix A lists the commenters on the Further Notice in addition to AT&T.

to apply the current interLATA carrier selection verification procedures to cover selections of intraLATA and local carriers as well. As AT&T showed in its Comments (p. 2), and as parties ranging across the spectrum of IXCs, ILECs, CLECs and state regulators agree, the current verification procedures have, when implemented and enforced, been successful in preventing unauthorized changes in service providers and can likewise be of value in the incipiently-competitive intraLATA and local markets.[2]

There is likewise broad recognition that, in view of the recent fundamental changes in the competitive landscape, LECs no longer can claim to be neutral parties in the carrier selection process.[3] Increasingly, those carriers will be the direct or potential competitors of other carriers involved in the dispute process (whether it be for local, intraLATA or interLATA service). It is therefore inappropriate as a matter of policy, and impermissible as a matter of reasoned decisionmaking, to provide for a role by those entities as intermediaries in

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[2] See BCI, p. 9; TRA, p. 7; USTA, p. 2; CBT, p. 8; BellSouth, p. 3; SBC Companies, p. 5; PaOCA, p. 5; GTE, p. 4; Excel, p. 2; CWI, p. 3; MCI, p. 3; LCI, p. 1; WorldCom, p. 3; ICC, p. 1; NYSDPS, p. 3, PUCO, p. 6.

[3] See Excel, p. 5; CWI, p. 4; LCI, p. 5; WorldCom, p. 5; NYSDPS, p. 6; Texas PUC, p. 3; Intermedia, p. 4; NAAG, p. 13; PaOCA, p. 5; WinStar, p. 4.

addressing carrier selection disputes -- as even some LECs and their representatives concede.[4]

Numerous commenters recognize that, for this reason, LECs acting as the "executing carrier" for a non-affiliated carrier should not be permitted to conduct any independent verification of carrier changes prior to processing those requests.[5] Indeed, some LECs disclaim any obligation or ability to perform that function.[6] Any other result will provide opportunities for competitive abuses, create unacceptable risks of delays, and hold customers' interests hostage to conflicts between submitting and executing carriers. The Commission should preclude these untoward results by expressly prohibiting executing carriers from verifying change orders received from a submitting carrier (which already has the duty of conducting any necessary verification).

II. THE COMMENTS FAIL TO JUSTIFY ELIMINATING THE "WELCOME PACKAGE" AS A VERIFICATION OPTION.

Many state regulators support the Commission's tentative proposal (Further Notice, ¶¶ 16-18) to

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4 See USTA, p. i. For this reason, special rules to govern the marketplace conduct of incumbent LECs ("ILECs") are especially warranted. See, e.g., Intermedia, p. 2; CWI, pp. 3-4; Excel, p. 4.

5 See Frontier, p. 17; MCI, p. 6. PUCO, p. 6; Intermedia, p. 2; Ameritech, p. 14; Bell Atlantic, p. 10; BellSouth, p. 8, SBC Companies, p. 6.

6 See Ameritech, p. 13; Bell Atlantic, p. 10; BellSouth, p. 8; SBC Companies, p. 6.

eliminate entirely the "Welcome Package" verification option currently permitted under Section 64.110(d) of the Commission's rules.[7] Alternatively, some of these parties propose "modifying" the Welcome Package method so that carriers would not be permitted to process a change order unless and until they receive via return mail the prepaid postcard included in the information package (rather than processing the order if the card is not returned within fourteen days of the Welcome Package's mailing, as under current practice).[8] This "modification" would also effectively eliminate any difference between the Welcome Package and a signed LOA.[9] Neither of these proposals is necessary or appropriate.

The state regulators' current disenchantment with the Welcome Package option is especially noteworthy because, as ACTA points out (p. 24), this verification method was originally proposed in 1991 by the National

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[7] See ICC, p. 3; NYDPS, p. 3; Texas PUC, p. 4; Vermont, p. 1; Public Staff, p. 5; MPSC, p. 2; Tennessee, p. 2; California, p. 8; PUCO, p. 8.

[8] See NYSDPS, p. 3; Tennessee, p. 2; WorldCom, p. 6.

[9] Significantly, none of the commenters that supports this approach acknowledges that customers who make a carrier change request, but fail to return the postpaid card, would be deprived of their selection of a carrier and relegated to a carrier from which they no longer desire to provide service. There is no conceivable justification for such an untoward result in the name of "consumer protection."

Association of Regulatory Utilities Commissioners ("NARUC"). None of the commenters provides any concrete evidence, moreover, that changed conditions since the adoption of this procedure warrant elimination of the Welcome Package option.

Instead, these parties generally posit that unscrupulous carriers bent on slamming could accomplish that goal by mailing consumers Welcome Packages, in the hope that they will be ignored or overlooked so that unauthorized carrier changes can be submitted in their names.[10] As AT&T showed, however (Comments, p. 6 n.7), it is highly unlikely that unscrupulous carriers would alert subscribers to a potential unauthorized change instead of merely submitting customers' change orders directly to LECs without prior notice.

There is thus no basis for eliminating the Welcome Package option (or transforming it to another form of LOA) as these commenters urge. Contrary to the commenters' apparent assumption, the Welcome Package is not an independent means of authorizing a carrier change. Instead, properly used, the Welcome Package is a beneficial option for verifying orders obtained through telemarketing, as several other commenters point out.[11]

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10 See Vermont, p. 3; California, p. 8; Excel, p. 6; Texas PUC, p. 4.

11 See U S WEST, pp. 29-30; BellSouth, p. 10; TRA, p. 11; DMA, p. 4; 360°, p. 4; AirTouch, p. 5.

The Commission should therefore revise this procedure to make it a more useful, and consumer friendly, instrument for verifying telemarketing orders for carrier changes.[12]

III. ABSOLUTION OF CHARGES FOR DISPUTED CARRIER CHANGES IS CLEARLY UNWARRANTED AS A SLAMMING DETERRENT.

Despite the Commission's rejection of such a remedy in the 1995 Report and Order some commenters, notably the National Association of Attorneys General ("NAAG") and certain state commissions, continue to press for totally absolving customers of all liability for charges in disputed carrier selections.[13] The overwhelming weight of the comments demonstrates, however, that this proposal would do nothing to deter unauthorized changes and would simply create havoc for law abiding carriers.

As AT&T showed in its Comments (pp. 8-11), the absolution remedy would render the private right of action on the part of authorized carriers, created by the

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12 Specifically, the Commission should eliminate the requirement that the package specify the consumer's current carrier -- information which is superfluous to consumers and which, in most cases, is unavailable to the new service provider. The maximum interval for mailing the Welcome Package should also be extended to seven business days (from three business days) so that this option can be used as a cost-effective backup to other verification methods (e.g., third-party verification) of telemarketing orders.

13 See NAAG, p. 5; ICC, p. 5; NYDPS, p. 4; Texas PUC, p. 5; Virginia SCC, p. 3; Public Staff, p. 2; MPSC, p. 3; Tennessee, p. 3.

new Section 258(b) of the Communications Act, a dead letter. Under that provision, authorized carriers are entitled to receive all revenues obtained from affected customers by carriers that have failed to follow the Commission's prescribed carrier change verification procedures. This "lodestar" would be completely eliminated if end users were instead absolved of any liability for charges by the unauthorized carrier -- and, with it, the incentive for authorized carriers to engage in private enforcement actions. The "remedy" proposed by some commenters[14] of requiring affected customers to instead pay their charges to their authorized carrier (which has rendered them no bill, and provided them no service) is clearly illusory.

Beyond its devastating effect on the Section 258 private enforcement right, numerous commenters point out that an absolution remedy would create perverse economic incentives for customers to delay raising bona fide slamming claims.[15] Adoption of any reparations measure that is likely to deter early correction of unauthorized changes would plainly disserve

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[14] See California, p. 11; ICC, p. 5; Texas PUC, p. 5; USTA, p 10.

[15] See MCI, p. 20; Texas PUC, p. 5; Virginia SCC, pp. 3-4; Citizens, pp. 3-5. Many other commenters point out that absolving customers of billed charges could actually encourage non-meritorious slamming claims. See, e.g., Ameritech, p. 20; SBC Companies, p. 11; Texas PUC, p. 5.

the interests of authorized carriers, the Commission's interest in compliance with its rules, and the long term interest of customers in controlling slamming. The Commission should therefore reaffirm its rejection in the 1995 Report and Order of the absolution proposal.

IV. SIMPLIFICATION OF PROCEDURES FOR DETERMINING CARRIER LIABILITY IS CLEARLY JUSTIFIED

Like AT&T (Comments, pp. 11-18), most commenters that address the issue recognize that the Commission's proposed procedures for resolving intercarrier liability issues in unauthorized changes -- and, in particular, the proposed method for determining the value of "premiums" -- is unnecessarily complex and burdensome. As these parties correctly point out, those premiums are ordinarily provided to customers out of the revenues that an authorized carrier would have received in the ordinary course of business absent a prohibited carrier change.[16] Thus, to the extent that the Commission's implementation of new Section 258 of the Communications Act permits authorized carriers to recover those revenues from an unauthorized carrier, there is no need for the parties to engage in the protracted negotiations, or for the Commission to engage in dispute

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[16] See SBC Companies, p. 13; Excel, p. 9; WorldCom, p. 13; ICC, pp. 5-6; Texas PUC, p. 7, Virginia SCC, p. 4.

resolution, over the value of premiums as contemplated under the Further Notice's proposal (¶¶ 29-31).

These observations fail, however, to take account of the fact that in many cases the revenue transfer procedure contemplated by Section 258 may be insufficient to fully compensate the authorized carrier for its lost revenues. This is because the Section 258 remedy is limited to revenues collected by the unauthorized carrier; thus, to the extent that carrier's charges may be less than the authorized carrier's, or that the unauthorized carrier fails successfully to collect all of its billed charges, the authorized carrier cannot be made whole by the Section 258 procedure.

To redress this imbalance, and to provide an additional economic deterrent to slamming, AT&T proposed in its Comments (pp. 15-17) that an unauthorized carrier be required to pay over to the authorized entity any shortfall between the charges that it collects from the customer and the amount that the subscriber would have been charged by the authorized carrier. Because the unauthorized entity already has the necessary usage information to make this calculation, the proposed procedure would impose no undue hardship on that carrier.[17] Indeed, this procedure properly places the

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[17] Under the Commission's currently-effective procedures, unauthorized carriers are already required to recompute customers' bills in cases of

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compliance burden on the carrier whose wrongful conduct caused the unauthorized carrier change. Moreover, with the additional revenues provided through this process, authorized carriers would be enabled to make reparations to customers for their lost premiums, without need to resort to complex and perhaps lengthy intercarrier negotiations or the need to expend the Commission's scarce administrative resources in resolving disputes over such matters.

V. THE COMMENTS DEMONSTRATE THE NEED FOR VERIFICATION AND RELATED PROTECTION FOR CARRIER SELECTION FREEZES

The record demonstrates overwhelming support for the Commission's proposal (Further Notice, ¶¶ 21-24) to extend current verification procedures to encompass carriers' solicitations of carrier selection "freezes." As the filings across a broad spectrum of interest groups, including IXCs,[18] CLECs,[19] state regulators,[20] and consumer interests[21] demonstrate, although the carrier freeze mechanism can offer valuable protection to

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(footnote continued from prior page)

disputed carrier changes and to re-rate those charges to the level that would have been assessed by the authorized carrier.

18 Excel, p. 4; WorldCom, p. 9.

19 Intermedia, p. 6.

20 NYDPS, p. 4; Texas PUC, p. 4; Public Staff, p. 4.

21 NYSCPB, p. 12; PaOCA, p. 7.

subscribers against unauthorized changes, this procedure is rife with potential for abuse by ILECs seeking to impair nascent competition in intraLATA toll and local markets, as well as to advantage themselves as they seek to enter the already-competitive interexchange market.[22] Verification of carrier freeze selections can assist in precluding this anticompetitive use of the freeze mechanism.[23]

Predictably, the only opposition to this measure comes from ILECs, who claim that verification is

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22 As the comments correctly point out, carrier freezes are also subject to abuse by other unscrupulous entities to complicate a customer's ability to countermand an unauthorized change (by applying a freeze to the unauthorized selection), or by acting without authorization to override a freeze previously placed by the customer on his or her selection of a preferred carrier. Because of this broad potential for abuse, AT&T showed in its Comments (p. 19) that verification should be applied to all carrier selection freezes, as well as to customer decisions to remove a freeze or change the designation of a frozen carrier.

23 However, as AT&T also showed in its Comments (pp. 19-21) -- and as other commenters also make clear -- the Commission must adopt additional measures to assure that carrier freezes are not used to impede the operations of existing and incipiently-competitive markets. For example, carriers cannot successfully adjust their marketing efforts to assure that a new subscriber's carrier choice is correctly implemented without access to information regarding which customers have applied freezes to their carrier selections (although not the identities of the previously-selected carriers). See AT&T Comments, p. 20.

unneeded and would disserve customers.[24] These self-serving claims are laid bare, however, by several recent developments that underscore how ILECs have already misused the freeze mechanism to stifle competitive entry and overreach unsuspecting consumers.

Specifically, on September 5 the Illinois Court of Appeals unanimously affirmed an earlier decision by the Illinois Commerce Commission, which had found that Ameritech's dissemination of a bill insert urging customers to apply a carrier freeze to their accounts -- which would freeze all levels of service -- on the eve of intraLATA presubscription in that state was misleading, discriminatory and anticompetitive.[25] The court pointed out that:

> "[i]t is undisputed that the mailing of the bill insert preceded customer notification of intra[LATA] presubscription. This fact, coupled with language in the bill insert emphasizing protection of a customer's long distance phone service, provide a reasonable and sufficient basis for the [ICC's] finding that the bill insert was misleading. Since customers were not yet informed that they would have choice in the intraLATA provider, there is no reason to believe

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24 BellSouth, p. 12; SBC Companies, p. 8; U S WEST, p. 39.

25 See Illinois Bell Tel. Co. v. Illinois Commerce Comm'n, Nos. 1-96-2146 et al. (Ill. App. Ct., September 5, 1997), affirming MCI Telecommunications Corp. v. Illinois Bell Tel Co., Case No. 96-00.75, Order (Illinois Commerce Comm'n, released April 13, 1996).

> that customers would interpret the insert as providing protection for anything other than their long distance service."[26]

The court therefore found that, "In effect, Ameritech was locking in a customer's choice of intra[LATA] carrier before the customer was aware of a choice and had the opportunity to exercise it."[27] In light of that finding, the court concluded that:

> "While we do not question the value of [a carrier freeze] as a means of preventing illegal slamming, we agree with the [ICC] that the timing of Ameritech's bill insert and offer of [a carrier freeze] hindered the opening of the intra[LATA] market to competition and presented an additional hurdle to customer choice."[28]

These same conclusions of abuse of the freeze mechanism found by the Illinois agency and court were also independently reached by the Public Utilities Commission of Ohio ("PUCO") in a decision released September 11 addressing a counterpart billing insert promoting a blanket carrier freeze, disseminated by Ameritech in that state before the availability of intraLATA competition.[29]

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[26] Id., p. 18.

[27] Id., p. 16.

[28] Id., p. 17.

[29] Complaint of Sprint Communications Co., L.P. v. Ameritech Ohio, Case No. 96-142-TP-CSS, Opinion and Order (Ohio Public Util. Comm'n, released September 11, 1997).

Like the ICC before it, the PUCO concluded that Ameritech's bill insert "is less than accurate[,] and improper" because it "does not adequately inform customers that [the carrier freeze] applies to local service."[30] It further found that, although intraLATA and local competition was not then authorized in Ohio, "Ameritech specifically chose to apply its [carrier freeze] to protect [these] other services for which slamming had not yet happened and for which slamming is not even an option in Ohio."[31] And the PUCO concluded that "the only reasonable explanation" for Ameritech's overly broad application of the freeze mechanism was "the retention of market share" in its monopoly intraLATA and local markets.[32]

As these agency and court findings make clear, the need for consumer protection in the carrier freeze context extends well beyond mere verification of freeze choices. As a threshold matter, AT&T showed in its Comments (p. 20 n.26) and other parties' filings confirm that the Commission should prohibit ILECs from affirmatively marketing intraLATA carrier selection freezes to their customers both prior to the availability of intraLATA toll dialing parity and for a reasonable

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30 Id., p. 26.

31 Id., p. 27.

32 Id.

period after such dialing parity is fully implemented.[33] ILECs should also be barred from adopting "account level" freezes in lieu of allowing customers to freeze the carrier at a desired service level (i.e., inter-, intraLATA or local).[34] And, as AT&T showed in its Comments (id.), in addition to accepting verified changes in frozen carrier selections, LECs should be required to accept forms submitted from customers as well as to provide automated means so that subscribers can conveniently change a frozen carrier selection or remove a freeze.[35] The record in this proceeding, which also incorporates the substantial record developed in MCI's pending petition for a rulemaking on carrier freezes, provides abundant evidence both of the imperative need

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33 Sprint, p. 35; IXC, p. 2; LCI, p. 1; California, p. 9; TW Comm, p. 4. Further, ILECs should be precluded from offering local freezes so long as those carriers remain classified as dominant. See AT&T Comments filed June 4, 1997 in MCI Telecommunications Corp. (Petition for Rulemaking), CCB/CPD 97-1, p. 6.

34 USTA, p. 7; CBT, p. 8; ICC, p. 4; Tennessee, p. 3; NCL, p. 8. Customers should also be provided with written confirmation of a freeze transaction, specifying the service level and carrier to which it pertains, and information on how to modify a frozen carrier choice or entirely remove a freeze. See AT&T Comments, p. 19 n.23; ICC, p. 4.

35 As a supplement to automated handling of customer requests, LECs should be required to accept three-way calls from a customer and another carrier to implement a frozen carrier change.

for such measures to curb abuse of the otherwise salutary carrier freeze mechanism.

VI. THE COMMENTS CONFIRM THAT VERIFICATION OF INBOUND CALLS IS BOTH UNNECESSARY AND UNDULY COSTLY.

AT&T demonstrated in its Comments (pp. 21-31) that, despite the Further Notice's contrary assumption, the record compiled in the earlier phase of this proceeding fails to establish that "inbound" (customer-initiated) calls to carriers account for any measurable amount of change order disputes (much less proven instances of "slamming"). Moreover, AT&T also showed (Comments, pp. 31-36) that the record already contains abundant evidence that verification of inbound calls would impose unacceptably high costs on carriers and harm customers through delayed order processing and loss of calling discounts. AT&T currently estimates that compliance with an inbound verification requirement would entail start-up costs of about $5.5 million, annual recurring costs of some $58.6 million, and annual revenue losses of at least $6.6 million.[36] It is clear that costs on this scale, multiplied across the entire body of carriers that process inbound calls, are grossly disproportionate to the wholly insubstantial threat of slamming from such transactions that the Further Notice seeks to address.

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[36] See Supplemental Declaration of Georgeana Neff, ¶¶ 6A-6B.

The commenters in the current phase of this proceeding that support the Commission's tentative proposal fail to remedy the serious deficiencies in record support for the need for any inbound verification requirement. For the most part, these commenters simply echo the Further Notice's conclusory and speculative assumption (¶ 4) that unscrupulous carriers bent on slamming could somehow entice customers to place inbound calls and then use those transactions as a basis for slamming.[37] As AT&T showed in its Comments (pp. 27-28), and as other parties confirm,[38] these scenarios blink reality: carriers that willfully engage in slamming typically make no effort to contact the subscribers they victimize, but simply submit their unauthorized changes directly to the executing carriers (typically, LECs). Not surprisingly, therefore, the commenters fail to supply any evidence that such hypothetical scams have resulted in any actual slamming.

Those few commenters that even attempt to supply any evidence of alleged inbound slamming provide nothing more than the "anecdotal" data rejected in the

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37 See ICC, p. 4; PUCO, p. 9; Intermedia, p. 5; TW Comm, p. 6; NAAG, p. 9; TRA, pp. 10-11; NYSCPB, p. 22.

38 See 360°, p. 6; USTA, p. 5, Working Assets, p. 6, RCN, p. 4; GTE, p. 10; Sprint, pp. 6-7; LCI, p. 11; CBT, p. 7; SNET, p. 8; BellSouth, p. 11; SBC Companies, p. 8; U S WEST, pp. 33-36.

Reconsideration Order (¶ 48) as a basis for reasoned decisionmaking.[39] Thus, the Florida PSC states (pp. 3-4) that in 1996 it "received 78 slamming complaints stemming from calls placed to carrier sales or marketing centers," but provides no other data to substantiate whether any of these complaints were, in fact, unauthorized changes rather than the product of the many problems that other commenters point out can lead to change order disputes.[40] Even if these complaints to the PSC were documented cases of slamming, moreover, that fact alone provides no justification for an inbound verification requirement in the context of the 9.1 million equal access lines currently in service in Florida, for which AT&T and other

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[39] Astonishingly, the Further Notice relies on just such discredited "evidence" to the limited extent it even attempts to cite a record justifying verification of inbound calls. Specifically, footnote 63 cites three purported examples (all over a year old) of informal complaints of unauthorized changes allegedly attributable to inbound calling, of which two involve AT&T.

However, one of those "examples" does not even involve a carrier change, but rather the customer's mistaken complaint that she had been double-billed by AT&T and NYNEX for local calls -- a service AT&T did not then even offer in her locale! See Letter dated March 29, 1996 from Marilyn Diamond. And while the other cited informal complaint claimed an unauthorized change (which AT&T denied), the Commission has made no finding on the merits of that charge (nor, typically, does it do so for any informal complaint). This type of material is too flimsy to remotely support reasoned Commission decisionmaking.

[40] See Sprint, pp. 7-12; MCI, pp. 19-20.

carriers submit millions of change orders annually.[41] Put simply, the PSC's data do not show that inbound calling is a measurable source of slamming problems.[42]

Similarly, MCI, which previously opposed the verification requirement for inbound calls, states (p. 10) without elaboration that it now believes that verification "can be done in a cost effective manner using [third party verification]." Whatever the reasons for its own unilateral decision to incur those costs, however, MCI fails to provide any data whatever to suggest that inbound carrier selection disputes occur with sufficient frequency to warrant imposing that burdensome requirement on all carriers.[43] Indeed, MCI's own prior filings in this docket belie any such need.

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41 See Statistics of Communications Common Carriers, Table 2.3 (1996).

42 Indeed, the PSC's filing shows (p. 4) that LOAs combined with sweepstakes and other inducements -- a practice that the Commission expressly banned in the 1995 Report and Order -- is "[t]he number one cause of slamming in Florida," accounting for 887 of the 2,393 "justified slamming complaints" found by that agency. These figures represent a dramatic increase over the 259 "justified complaints" from sweepstakes LOAs registered by the PSC in 1995 (out of a total then of 1,613). Id.

43 Like other commenters, MCI alludes (id.) to the bare possibility that, in the absence of verification, unscrupulous carriers will "seek to take advantage of consumers with questionable or illegal marketing practices." The "example" of such conduct that MCI cites (n.12), however, did not involve unauthorized carrier changes. Rather, that carrier adopted various trade names (e.g., "I Don't Care") to victimize unsuspecting customers who were routed to

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Specifically, in a June 12, 1997 ex parte submission, MCI showed that for 1995 disputes for orders obtained through inbound calling accounted for only 0.96 percent of its order volume from that sales channel. Moreover, the adoption of MCI's third party verification program did not eliminate this already insubstantial volume of disputes.[44]

These data confirm both that inbound calling is not a significant source of carrier selection disputes, and that implementation of verification of such calls is no panacea for those disputes. More important, however, neither the ex parte filing nor MCI's comments in this proceeding deny the accuracy of the cost estimate of $10 million for inbound verification in the first year alone provided by MCI in 1995 -- an amount that is grossly disproportionate to the extremely low incidence of disputes from these calls.[45]

(footnote continued from prior page)

that carrier by Southwestern Bell's "0-" transfer service after the subscribers used such terminology to indicate they had no carrier preference.

[44] See ex parte letter in CC Docket No. 94-129 dated June 12, 1996 from Leonard S. Sawicki, MCI, to William F. Caton, FCC.

[45] See AT&T Comments, p. 31 n.45. MCI's other claims regarding the putative benefits of its verification program are equally unsupported. For example, MCI claims (p. 5) that this procedure somehow reduces the costs of "storage and handling of LOAs." MCI fails to offer any explanation of how such cost savings can be achieved, in light of the

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The current record also confirms AT&T's showing that verification would dramatically increase carriers' costs without any corresponding increase in consumer protection. For example, as Sprint points out (p. 32), adoption of a verification requirement would increase that carrier's current costs of verification by fully 50 percent in the first year.[46] U S WEST likewise presents detailed estimates of the annual costs of verifying inbound calls, ranging from $1.995 million to $2.835 million, depending upon the verification method selected.[47] Applied across all LECs -- some of which have even larger customer bases than U S WEST -- it is apparent that the inbound verification requirement proposed in the Further Notice would add tens of millions

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Commission's requirement that carriers retain all LOAs for one year. Except for the relatively few change orders based on LOAs that may be eliminated through verification (and MCI's ex parte filing shows that number is not significant), the need for storage and retrieval of such order documentation would not be affected by a verification process.

46 Sprint has submitted its cost estimates to the Commission with a request for confidential treatment, but its publicly filed comments show that those costs are projected to run into the millions.

47 The lower range of U S WEST's cost estimate is predicated on reliance on the current "Welcome Package" method, which the Further Notice tentatively proposes to eliminate. Otherwise, U S WEST would rely on even costlier electronic verification procedures.